

REMARKS

Claims 301, 303, 304, 307-310, and 322-333 are pending in the application.

Improper Final Rejection

By the Office's November 20, 2003 Action, the matter was placed under final rejection. Applicant disagrees. Specifically, the Office cited United States Patent Number 5,840,358 issued to Hofler, et al., in its rejection of Claims 301, 303-310 (presumed to be Claims 303, 304, 307-310) under 35 U.S.C. §§102(b) or 103(a) in the alternative. The Office's action of November 20, 2003 was the first citation of the Hofler reference. As the Manual of Patent Examining Procedure notes:

Under present practice, second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). ...Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will *not be made final if it includes a rejection, on newly cited art*, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. *M.P.E.P. §706.07(a)*. Emphasis added.

Thus, not only is the finality of the rejection improper, but the citation of this reference at this late date may indicate Applicant is facing a piecemeal examination which is discouraged in *M.P.E.P. §707.07(g)*.

Therefore it is believed that the finality of the pending rejections is improper. Moreover, it is Applicant's belief that the finality is improper because the Office utilized Hofler to reject Claims 301, 303, 304, 307-310, all of which were not necessitated by the amendment included in the immediately preceding Response. In addition, if the finality of the pending Action were to be maintained, this would place an undue burden on Applicant's

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attempt to clarify issues for (potential) appeal. Removal of the finality of the pending action is respectfully requested.

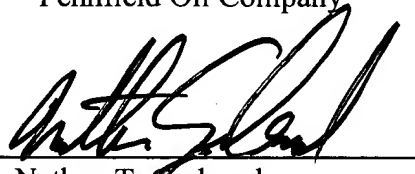
CONCLUSION

In light of the forgoing, reconsideration and allowance of the claims is earnestly solicited.

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Respectfully submitted on behalf of
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By



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